INDEX

	Page
Opinion below	1
Jurisdiction	1
The Question	2
Statement	2
Summary of Argument	25
Argument:	
I. The applicant was not entitled to a judicial hearing of his claim of citizenship	26
II. There was evidence to support the conclusion of the immigration officers	27
III. The hearing was in accordance with the statutes and rules and did not deny due process	27
Conclusion	29

AUTHORITIES CITED

Cases:	
Fisher v. *Baker*, 203 U. S. 174	3
Givens v. *Zerbst*, 255 U. S. 11	3
Kwock Jan Fat v. *White*, 253 U. S. 454	26
Ng Fung Ho v. *White*, 259 U. S. 276	26
United States v. *Ju Toy*, 198 U. S. 253	26
United States v. *Sing Tuck*, 194 U. S. 161	26
United States v. *Dunton*, 297 Fed. 447	28
Statutes:	
Judicial Code, Sec. 238	2
Act of February 5, 1917, c. 29, 39 Stat. 874, 886:	
Sec. 16	4
Sec. 17	5
Act of February 16, 1875, c. 77, 18 Stat. 315	3
Miscellaneous:	
Equity Rule No. 46	3
Immigration Rules of July 1, 1925:	
Rule 14, Subdivision G	7
Rule 23	7
Immigration rules governing admission of Chinese, Rule 3, Subdivisions 3 and 4	6

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 68

QUON QUON POY, APPELLANT

v.

JOHN P. JOHNSON, U. S. COMMISSIONER OF IMMIGRATION at the port of Boston, Mass.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR APPELLEE

OPINION BELOW

No opinion was filed by the District Court. (R. 5.)

JURISDICTION

The judgment to be reviewed was entered December 16, 1924. (R. 5.) Petition for appeal was filed and allowed December 31, 1924. (R. 7.) The District Court discharged the writ of habeas corpus attacking the appellant's detention by the Commissioner of Immigration under an exclusion order. The petition for the writ alleged that the

immigration officers had denied the petitioner a fair hearing and that he was deprived of his liberty without the due process to which he was entitled under the Constitution of the United States. (R. 2.) The court below necessarily decided the question, and it is covered by the assignments of error. (R. 8.) Direct appeal was properly taken under Section 238 of the Judicial Code as it stood prior to the effective date of the Act of February 13, 1925.

THE QUESTION

The appellant is a Chinese seeking admission to the United States on the ground that he is a citizen, because the son of Quon Mee Sing, a citizen. The question presented is whether the immigration officers deprived the appellant of a fair hearing, and consequently of due process of law, on the single question of fact as to whether he is the son of Quon Mee Sing. The appellant also contends that he was entitled under the Constitution to a judicial hearing of his claim to citizenship without regard to the action of the immigration authorities.

STATEMENT

This is an appeal from an order discharging a writ of habeas corpus. The appellant, Quon Quon Poy, applied for admission to the United States, claiming to be a citizen of the United States, because, as he claims, he is a son of Quon Mee Sing, who is a citizen.

The nature of the case required the court below to examine the record of the proceedings of the immi-

gration officers, and that record was made a part of the return to the writ (R. 4), was admitted in evidence (R. 6), and was transmitted to this Court by the court below (R. 5), but the appellant has not caused it to be printed.

In the printed record appears what is labeled a bill of exceptions. (R. 5.) Review of orders in habeas corpus proceedings must be by appeal, not by writ of error. *Fisher* v. *Baker*, 203 U. S. 174, 182. An appeal brings up the entire record. Bills of exceptions are authorized on writs of error. There is a statute (Act of February 16, 1875, c. 77, 18 Stat. 315) which provides for bills of exceptions in admiralty cases where framed issues are submitted to a jury, and an Equity Rule, No. 46, authorizing a bill of exceptions in appeals in equity cases for the sole purpose of reviewing the action of the lower court in excluding evidence. We have found no statutory or other authority for a bill of exceptions on an appeal in habeas corpus proceedings which can have the effect of excluding this Court from consideration of the whole record. *Givens* v. *Zerbst*, 255 U. S. 11, 20–21.

The so-called bill of exceptions in this case purports to state some things disclosed by the immigration record, and in this aspect it is not a bill of exceptions in any sense. We call attention to this state of the record because the so-called bill of exceptions is an incomplete and inaccurate statement of proceedings before the immigration officers, and some statements in it appear to directly conflict with the record of the immigration proceedings.

The case depends upon an accurate understanding of what took place before the immigration officers, and we submit that the so-called bill of exceptions should be disregarded, and the Court should examine the immigration record for itself.

This statement of the case is therefore based on the transcript of the immigration proceedings sent up by the court below.

The District Court proceeded on the theory that if there was a fair hearing before the immigration officers on the question of the appellant's paternity, no judicial inquiry into his citizenship was authorized, and, on examination of the record of the immigration proceedings, having determined that the hearing was fair, and the conclusion of the immigration authorities not without support in the record, it discharged the writ of habeas corpus, refusing then to institute an independent judicial inquiry on the question of citizenship.

Quon Quon Poy, a boy of 15, arrived at the port of Boston on June 24, 1924, and sought admission as the son of Quon Mee Sing, a citizen. He was excluded because it was not believed the relationship exists. The procedure established by statute and regulations of the Department of Labor applicable to such cases may be outlined as follows:

Section 16 of the Act of February 5, 1917 (chap. 29, 39 Stat. 874, 886), contains the following:

> Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond doubt

> entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Secretary of Labor is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal.

Section 17 of the Act provides that boards of special inquiry shall be appointed by the Commissioner of Immigration; that they shall consist of three members, and shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. The section also provides (p. 886):

> All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the commissioner of immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Labor, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is

so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision, which shall be rendered solely upon the evidence adduced before the board of special inquiry.

Subdivisions 3 and 4 of Rule 3, of the rules governing the admission of Chinese, provide:

* * * Hearings before the boards "shall be separate and apart from the public"; but the alien may have one friend or relative present after the preliminary part of the hearing has been completed: *Provided,* First, that such friend or relative is not and will not be employed by him as counsel or attorney; second, that, if a witness, he has already completed the giving of his testimony; third, that he is not the agent or a representative at an immigration station of an immigration aid or other similar society or organization; and, fourth, that he is either actually related to or an acquaintance of the alien.

SUBD. 4. *Introduction of additional evidence.*—If upon examining the applicant and the witnesses appearing in his behalf the board of special inquiry does not conclude that the applicant is admissible, notice shall be served upon the applicant or his attorney to that effect, such notice to state the respect or respects in which the evidence is deemed by the board of special inquiry to be insufficient. If the applicant or his attorney within five days thereafter expresses a desire to introduce additional evi-

> dence, ten days from the date of the first mentioned notice shall be allowed for that purpose. If neither the applicant nor his attorney thus indicates a desire to introduce additional evidence, the case shall be closed.

There is nothing in these statutes or rules which prohibits the board of special inquiry from receiving the record of testimony given by witnesses in the preliminary hearings before the examining inspector.

Subdivision G of Rule 14 of the immigration rules of July 1, 1925, provides:

> Whenever a record on appeal has been sent to the department, and either before or after receipt of a decision affirming an excluding decision the local immigration officals learn of new evidence of such relevancy and materiality as in their opinion to require that, in justice to the alien or the United States, it be considered by the board, they may stay deportation and request permission to reopen the case * * *.

Rule 23 of the Immigration Rules of July 1, 1925, authorizes commissioners of immigration and inspectors to subpœna witnesses and provides that a board of special inquiry may subpœna witnesses at the request of an alien or his authorized representatives.

The record shows that the foregoing provisions and rules were not violated.

Preliminary examination of the applicant by Inspector Stockwell and an interpreter commenced

September 10, 1924. Quon Quon Poy appeared without being accompanied by friend or counsel, was sworn and examined at length as to his life in China. On September 11, 1924, the hearing continued, and the alleged father, Quon Mee Sing, offered himself as a witness and was sworn and examined at length, and on the same day Quon Gong Set, an alleged brother of the applicant, aged 25, offered himself as a witness and was fully examined. These witnesses said their testimony covered all they desired to say.

On September 12, 1924, the hearing before the inspector was continued, the applicant being recalled alone, and again examined by the inspector. The applicant was intelligent, had attended school, and stated that he thoroughly understood the interpreter. No other witnesses offered themselves or were produced by or for the applicant. That his case was then being looked after by an attorney is disclosed by the subsequent proceedings, although the attorney was not, under the rules, permitted at these preliminary hearings, or at the later hearing before the board of inquiry. At the close of the inspector's hearing on September 12th, the case was immediately referred to a board of special inquiry consisting of Inspector Stockwell, who had heard the preliminary statements, and two others. The applicant was present, without counsel or relative. On being sworn, at the opening of the proceedings before the board the following took place:

Q. What is your name?

A. Quon Quon Poy.

Q. You are informed of your right to have a relative or friend present at this hearing. Do you desire to avail yourself of this right?

A. No.

Q. Do you waive your right to have present a relative or friend and are you now willing to proceed with the hearing?

A. Yes.

Q. You are the same person who was examined by me on September 10 and again this morning?

A. Yes.

Q. Record of the testimony offered by you on those occasions will be made part of the present proceedings. Do you understand?

A. Yes.

Q. Since your first appearance your alleged father, Quon Mee Sing, and your alleged brother, Quon Gong Set, have been examined and the record of your testimony will be made a part also of the present proceedings. Do you understand?

A. Yes.

The applicant was then further examined in the presence of the board. Neither the alleged father nor the alleged brother asked for leave to repeat before the board the testimony given before Inspector Stockwell.

At the close of the board's hearing, September 12th, proceedings were deferred for further medical examination.

The board of special inquiry met again September 25, 1924, and the record of that meeting is as follows:

BSI 4. (2500/5929)

IN RE QUONG QUONG POY

Rehearing September 25, 1924, by Board of Special Inquiry.

Inspector A. W. Stockwell, Chairman, Inspector J. V. Fitzgerald, Inspector F. A. McCarthy, Recorder.

EAST BOSTON, MASS., *Sept. 25, 1924.*

(Previous record read and considered.)

Note.—This case was deferred September 12, 1924, for further medical examination. The applicant, appearing to be older than the age claimed, was given a thorough physical examination and under date of the 23d instant the Medical Division at this station reported as follows: "In re Quon Quon Poy, male, Chinese, ex SS Prince George, June 25, 1924.

"In reply to your request, the above-named Chinese applicant was given a thorough physical examination, including X-ray plates, with a view to determining his approximate age. Although he looks older than the age claimed, the X-ray plates showed skeleton formation characteristic of a person in the vicinity of fifteen years of age, which is approximately the age claimed.

"Respectfully,

"(Sgd.) A. J. NUTE,

"Medical Officer in Charge."

By CHAIRMAN. The *citizenship* of the alleged father, Quon Mee Sing, was favorably passed upon by the Bureau in its letter No. 54820/158 of February 13, 1920. (See Boston file 2500/2161.) The claimed *relationship,* however, is in doubt.

1. The applicant, Quon Quon Poy, claims to be native of, and always to have resided in a Chinese village composed of seven rows containing 16 or 17 buildings. In spite of the comparatively simple task of describing this small village, however, the applicant and his two witnesses (the alleged father and the alleged prior-landed brother) failed of reasonable agreement in their respective descriptions.

In an attempt to clear up some of the discrepancies during cross-examination the applicant, who claims to have lived in the fourth row of his village ever since birth, asserted that he had never seen the lots in the fifth row (adjoining his own row) until the day of his departure for America when he left from that side of his house.

When it came to a description of the sixth row of the village the applicant asserted and reasserted that there is only one vacant lot at the head of that row followed by two houses on the second and third lots. The alleged father, on the other hand, testified that there are two vacant lots at the head of that row followed by a house on the third lot. The alleged prior-landed brother states that all the lots in that row are vacant save for

one small house at the lower end of the row. Other points of disagreement exist but the foregoing illustration is sufficient.

2. There are several discrepancies regarding the occupancy of houses in the home village only one or two of which need be cited here.

On his first appearance the applicant asserted that the family in the house directly back of his in the same row consists of Quon Quok Hong with wife, one son and two daughters; that the son is aged 13 or 14 and the daughters are between 15 and 20 years of age. On cross-examination he again asserted that the daughters are older than the son, explaining that they are "taller" than the son and must be older. The alleged father testified that there are no daughters in this family, while the alleged brother claimed that the daughters are younger than the son with ages ranging from 9 to 12. It is difficult to account for such discrepancies in reference to the family of a next-door neighbor.

3. Questioned as to the occupancy of the first house in his row, separated by only two lots from his own house, the applicant originally testified that it is occupied by Quon Sung Chun, a widower, who lives there alone and who, "so far as I know, never had any children." At his second appearance the applicant testified that Quon Sung Chun had a son who went to Havana several years ago, but that the son's wife and her son, aged 4 or 5, now live with Quong Sung Chun.

The alleged father also stated that the first house in his row belongs to Quon Sung Chun, but that the latter is married and that his wife and one son, aged "a little over ten years," live with him. The alleged brother also agrees that Quon Sung Chun lives in the first house of that row with his wife and one son, the latter, however, being 14 or 15 years old and attending school. (If this were true the son apparently would be a schoolmate of the applicant.)

The alleged brother further testified that another man, named Quon Yick, also resides with Quon Sung Chun in the same house. The alleged father agrees with the alleged brother in respect of Quon Yick, but the applicant states that Quon Yick lives with Quon En You in the next (third) row of the village.

4. The applicant was questioned at his first appearance, and again on cross-examination, regarding the occupancy of the first house in the third row which adjoins the row in which his own house is located. On each occasion he testified that that house is occupied by Quon En You and Quon Yick, both unmarried; "so long as I can remember the two have lived alone together."

As stated above both the alleged father and the alleged brother testified that Quon Yick lives with Quon Sung Chun in the first house of the fourth row.

Concerning Quon En You the alleged brother states that he is a widower with one son who is abroad. The alleged father testi-

fied regarding the existence of Quon En You's son, adding that the son's wife and child (aged 8 or 9) reside in the house with Quon En You.

5. When first questioned about the family living in the house opposite the small door of his own house the applicant stated that Quon Hen Set resides there with his wife and one son aged about ten years who "has not yet entered school." On cross-examination, however, the applicant testified that the son is 13 or 14 years of age and attended school with him in the home village. The alleged father describes this son of Quon Hen Set as 18 or 20 years of age working out as a farmer; and in support of the claimed age added that he saw this son when he (the witness) visited China in 1908. The alleged brother also testifies that Quon Hen Set's son is a little over 20 years of age and is employed as a farmer.

In view of the foregoing I am not satisfied that the claimed relationship has been reasonably established and I therefore move that the applicant be given the usual time in which to submit additional testimony.

Inspector J. V. FITZGERALD. I second the motion.

Inspector F. A. MCCARTHY. It is unanimous.

Not satisfied, September 25, 1924.

A. W. STOCKWELL,
Chairman.

F. A. MCCARTHY,
Recorder.

Thereupon the following letter was sent to applicant's attorney:

No. 2500/5929

QUON QUON POY

U. S. DEPARTMENT OF LABOR,
IMMIGRATION SERVICE,
OFFICE OF COMMISSIONER,

East Boston, Mass., September 26, 1924.

Hon. JOSEPH F. O'CONNELL,
11 Beacon Street, Boston, Mass.

DEAR SIR: In re application of above-named for admission into the United States at this port as son of a citizen you are advised that the Board of Special Inquiry hearing the case has entered the following preliminary decisions:

Satisfied as to citizenship of alleged father.

Not satisfied as to claimed relationship.

You are, therefore, allowed five days in which to state whether or not you wish to submit any additional evidence and, if so, five more days will be allowed you for that purpose.

If you do not wish to submit any additional evidence, please so advise in order that the case may be closed and a decision rendered of which you would be advised to enable you to exercise your right of appeal and examine the record.

Very truly yours,

JOHN P. JOHNSON,
Commissioner.

And the applicant's attorney responded as follows:

SEPTEMBER 29, 1924.

COMMISSIONER OF IMMIGRATION,

East Boston, Mass.

DEAR SIR: In the case of Quon Quon Poy, Boston file 2500/5249 in which you have entered a not-satisfied decision, permit me to say the applicant has no further testimony to offer and desires to appeal.

Will you kindly send me the attorney's copy of the testimony so that the appeal may be perfected.

Very truly yours,

(Sgd.) JOS. F. O'CONNELL.

JFO/MW

Thereupon the Board of Inquiry again met on October 1, 1924, and the record of its proceedings is as follows:

No. 2500/5929. B. S. I. 7.

IN RE QUON QUON POY

EAST BOSTON, MASS., *October 1, 1924.*

Rehearing in the case of Quon Quon Poy, before a Board composed of:

Inspectors Stockwell, Chairman; Jensen; McCarthy, Recorder; Interpreter Yee Chew Yim.

Previous record read and accepted.

NOTE.—On September 25, 1924, a "Not satisfied" motion was entered in this case and the applicant accorded the usual time in which to submit additional evidence. In a

communication dated September 29th the attorney in the case, Hon. Joseph F. O'Connell, advised this office that he had no further testimony to offer and that the case might be closed.

Applicant recalled, sworn, testified:

Q. What are your names?

A. Quon Quon Poy is my only name.

Q. Are you the same Quon Quon Poy who appeared before me several times last month?

A. Yes.

Q. Do you remember what day you left Hong Kong?

A. The 4th month, 25th day, this year. (May 28, 1924.)

Q. Who purchased your steamship ticket?

A. The manager of the Quong Fat Wing store in Hong Kong.

Q. According to your previous testimony your father sent the money for your passage to Soon Hing Hong Co. at Hong Kong, and you went to the office of that Company, obtained the money and bought your own ticket for the U. S. How do you explain that?

A. I was mistaken when I said the money was sent to Soon Hing Hong Co. My father sent the money to the Quong Fat Wing store and I went with the manager of that company to buy the ticket. The manager bought the ticket. I don't know how much he paid for it.

By CHAIRMAN. In connection with the "Not Satisfied" motion rendered in this case on September 25th, the citizenship of the alleged father, Quon Mee Sing, was recognized, but the Board was not satisfied as to the existence of the claimed relationship.

In the absence of additional evidence I am still of the opinion that the claimed relationship has not been reasonably established. I therefore move that the applicant, Quon Quon Poy, be excluded as a Chinese alien not a member of any of the exempt classes entitled to enter or remain in the United States; also as an alien afflicted with uncinariasis, hookworm infection, which may affect ability to earn a living; and also as an alien likely to become a public charge.

Inspector JENSEN. I second the motion.

Inspector MCCARTHY. I make it unanimous.

To applicant: You have been refused admission to the United States by this Board as a Chinese alien not a member of any of the exempt classes entitled to enter or remain in this country, this Board not being satisfied of existence of relationship which you claimed to Quon Mee Sing as your alleged father. You have also been refused admission as an alien afflicted with uncinariasis, hookworm infection, which, as indicated by the Medical Certificate issued in your case, may affect ability to earn a living; and also as an alien likely to become a public charge.

From this decision you have the right of appeal to the Secretary of Labor at Washington, D. C., to whom in the event of an appeal the entire record in your case will be forwarded for review. Do you wish to appeal?

A. I will leave it to my father.

Q. In the event of your deportation you will be returned to the country whence you came, by and at the expense of the transportation line bringing you here, in the same class of travel by which you arrived. Do you understand?

A. Yes.

Q. Have you anything further to say?

A. No.

Q. Have you thoroughly understood the Interpreter?

A. Yes.

Excluded, October 1, 1924.

(Sd.) A. W. STOCKWELL,
Chairman.

F. A. MCCARTHY,
Recorder.

On October 2, 1924, the following letter was addressed by the Commissioner to the applicant's attorney:

OFFICE OF THE COMMISSIONER,
East Boston, Mass., October 2, 1924.

Mr. JOSEPH F. O'CONNELL,
11 Beacon Street, Boston, Mass.

DEAR SIR: Receipt is acknowleged of your letter of the 29th ultimo, stating that you desire the case of Quon Quon Poy closed, and

copy of testimony forwarded to you in order to perfect an appeal.

In compliance therewith, please find enclosed said copy, consisting of twenty-six (26) pages, receipt of which kindly acknowledge.

The enclosed copy is to be returned when the case of Quon Quon Poy is finally disposed of.

(Signed) JOHN P. JOHNSON,
Commissioner.
By L. C. WEBB.

The case came before the Board of Review on appeal on November 1st, the applicant's attorney appearing. The conclusions of the Board of Review approved by the Secretary are as follows:

Board of Review memorandum 38–37 and 36.
Page 38.
BOSTON, *November 1, 1924.*

55392/626.

In re: Quon Quon Poy, aged 15.

This case comes before the Board of Review on appeal.

Attorney Joseph F. O'Connell granted a hearing.

This is the case of a fifteen-year-old Chinese boy who arrived at the port of Boston on June 25, 1924, and sought admission as the son of a citizen. He was excluded because of the fact that it was not believed that the relationship exists, and also as an alien afflicted with a physical disability which might affect his ability to earn a living, and as a person likely to become a public charge.

The record shows that the alleged father, Quon Mee Sing, is a native born citizen of the United States, and, therefore, if it is finally held that the relationship is established, the applicant is a citizen and all causes of exclusion fall.

The alleged father made a trip to China in 1908, returning in 1912. He again went to China in 1920, returning in 1922. The alleged father's file, No. 1097, which contains a record of his examination upon the occasion of his return on June 1, 1912, has a material bearing on this issue. He was asked

Q. Have you any children?

A. Two boys.

Q. What are their names and ages?

A. Quong Gong Sick, 13 years old; Quong Gong Yow, 12 years old.

Q. What were the dates of their births?

A. Quon Gong Sick was born K. S. 26–1–15 and Quon Gong Yow was born K. S. 28–12–20.

Q. Then these boys were both born before you returned to the United States the first time?

A. Yes.

Q. How old was Quon Gong Yow when you left China?

A. One year old.

Q. Did you ever have any other child except these two boys?

A. No.

Q. Have you any adopted children?

A. No.

The applicant claims to have been born on February 10, 1910, which was over two years prior to the time that the alleged father stated he had but two children and never had any other children. The two children of the alleged father referred to in 1912 have since been admitted to the United States. It will, therefore, be seen that this is a clear-cut prior adverse testimony case. There are other reasons which lead the Board of Review to believe that this boy is not the son of his alleged father. For instance, he was examined in 1920, at which time his birth date was given as S. H. 3–1–1, which would be January 30, 1911, whereas it is now given as February 10, 1910, which would be S. H. 2–1–1. Again, in 1922, the alleged father testified that he had four boys, and as to the first two gave the day and month in which they were born, stating that he did not know the year. However, for this boy he at that time stated, "I do not know the year, month, or day of birth." He was able to give the exact birthday for his next child.

The record is exceptionally unfavorable to the applicant. In fact, it would appear that the applicant lacks considerable knowledge concerning his family life, and has advanced the most ridiculous explanations imaginable to apparently cover up his ignorance. The applicant claims to come from the village of Joan Wing, which is composed of only about sixteen houses. One would think that a boy who has lived in such a small

village all his life thus far would be in position to know practically every person in such a small village, and to describe correctly the house in which they live. However, the applicant states on one occasion that two houses in this village were torn down, and when asked when he first saw that these buildings had been torn down, he replied " the first time I knew the buildings were torn down and that the lots were vacant was the day when I left home for the United States." Again he states that he never saw the houses opposite the small door of his own house until the day of his departure for the United States. This statement is ridiculous as it is impossible. The boy is not blind, and has been able to attend school for the past few years. He admits that he has been proceeding from the school to his house daily for the purpose of securing his meals and from this it will be seen that it would not have been possible for him to have lived such a life as to warrant the statements made by him.

One of the prior landed alleged brothers, Quon Gong Set, appeared as a witness. While there are discrepancies between the testimony of the applicant, the alleged father, and the prior landed alleged brother, the testimony of the prior landed brother and the alleged father is in much better agreement than is their testimony when compared with that of the applicant. The applicant has disagreed with him otherwise concerning approximate ages of immediate neighbors, the number of people in the village, etc.

Strange to say, there are two favorable features to this case, and these are about the only favorable features. There is a good resemblance between the photograph of the applicant and his father. (See Boston File 2500/5229.) However, such a resemblance is far from being conclusive of the claims advanced. Again the Board of Special Inquiry thought that this applicant was older than the age claimed, but Dr. Nute of the Public Health Service has issued a certificate to the effect that an X-ray examination shows the boy to be just about the age claimed.

After a careful consideration of the entire case, the Board of Review is of the opinion that the alleged father's very positive statements in 1912 to the effect that he had no such son, his subsequent doubtful statements concerning the birthplace of this boy, and the applicant's lack of knowledge of matters which clearly should be within his memory, clearly overcome the few favorable features existing in this case, and it is, therefore, believed he has fallen far short of bearing the burden of proof, placed upon him by law, of establishing that he is in truth and in fact the son of his alleged father. The finding that he is not the son of his alleged father, and as he is otherwise without a status entitling him to admission to the United States, make it necessary to recommend that the excluding decision be affirmed.

It is recommended that the appeal be dismissed.

F. J. PHILLIPS,
Acting Chairman, Secretary & Commissioner General's Board of Review.

ES:H

So ordered.

(Sgd.) ROBE CARL WHITE,
Second Assistant Secretary.

There is no suggestion in the record that the applicant or his alleged father or his attorney suggested or requested that the testimony taken before Inspector Stockwell should be repeated by the witnesses in person before the full Board.

SUMMARY OF ARGUMENT

The principal argument of the appellant that he was entitled under the Constitution to a judicial determination of his claim of citizenship unaffected by findings of the immigration officers, is directed to a point already disposed of by this Court adversely to his contention. It is settled that a person who is in legal contemplation without the borders of the United States seeking entry is not entitled under the Constitution to a judicial hearing of his claim of citizenship. The procedure followed by the immigration officers constitutes due process of law, and their determination of the question of citizenship, after a fair hearing and with evidence to support it, concludes the matter. In the present case the only question is whether the applicant had a fair hearing on the issue of fact as to whether he

is the son of an American citizen. The record discloses such numerous and substantial discrepancies in the statements of the witnesses as to justify the decision. The applicant was not denied a fair hearing by the rule forbidding the presence of attorneys at the hearing before the Board of Inquiry. The record shows a fair hearing and ample opportunity was given to his counsel to present evidence before the Board.

ARGUMENT

I

THE APPLICANT WAS NOT ENTITLED TO A JUDICIAL HEARING OF HIS CLAIM OF CITIZENSHIP

The brief of the appellant is devoted largely to the claim that under the Constitution a person seeking entry and claiming citizenship is entitled to a judicial determination of his claim of citizenship. It seems to be settled that the law is otherwise and that where a person who is in legal contemplation without the borders of the United States, seeking entry, makes a claim of citizenship, the Constitution does not entitle him to a judicial hearing on the question of citizenship and the due process clause is satisfied by a fair administrative hearing. *United States* v. *Sing Tuck,* 194 U. S. 161; *United States* v. *Ju Toy,* 198 U. S. 253; *Kwock Jan Fat* v. *White,* 253 U. S. 454; *Ng Fung Ho* v. *White,* 259 U. S. 276.

II

THERE WAS EVIDENCE TO SUPPORT THE CONCLUSION OF THE IMMIGRATION OFFICERS

The opinion of the Board of Review contained in the statement of facts points out some discrepancies in the testimony which justified the conclusion that the applicant was not the son of Quon Mee Sing. The most significant item was the testimony of Quon Mee Sing given at a previous entry by him in 1912, which directly contradicted the testimony given in this hearing that he had any son of the age of the applicant. Many other discrepancies in the testimony could be pointed out, but it would serve no purpose to do so. As said by the Board of Review, the record is exceptionally unfavorable to the applicant.

III

THE HEARING WAS IN ACCORDANCE WITH THE STATUTES AND RULES AND DID NOT DENY DUE PROCESS.

The statutes and rules do not allow an applicant for admission to have either a friend or an attorney present at the preliminary examinations before inspectors. When the case reaches the Board of Inquiry the applicant is entitled to have a friend or relative present, but not an attorney. The presence of an attorney is allowed before the Board of Review. In the present case the applicant's

alleged father appeared before the Inspector and testified, though he was not present with the applicant. The statement in the alleged bill of exceptions and in the appellant's brief, that after all the evidence had been taken and at the very conclusion of the trial the boy was told of his right to have a relative or friend present, is hardly a fair statement. At the very opening of the hearing before the Board of Inquiry he was advised of this right, and declined to avail of it. It was not necessary to inform him of this right. (*United States* v. *Dunton*, 297 Fed. 447.) His alleged father had appeared and testified the day before and was no doubt in close touch with the proceeding, and there was an attorney, Mr. O'Connell, who was also looking after the matter from the outside and no doubt in touch with the alleged father. It is true that at the hearing before the Board of Inquiry little additional oral testimony than that of the applicant was taken, and the statements of his alleged father and brother and his own earlier statement were introduced as taken down and transcribed, but there is nothing to indicate that the Board would have refused to reexamine these witnesses in person if the request had been made. The hearing was adjourned and counsel asked if he desired to introduce other testimony, and ample opportunity was then given to the applicant's counsel and friends to produce additional testimony before the Board and to ask that the witnesses already sworn, the alleged father and brother, be reexamined be-

fore the Board. No such request was made, but on the contrary the Board was notified by applicant's counsel that he did not desire to introduce any more evidence and wanted the hearings closed for the purpose of an appeal. If the applicant's counsel had thought it necessary for his protection that the alleged father or older brother be present at the Board hearings, it could have been arranged. While the applicant was young, he appeared to be intelligent, had some education, and it is evident his alleged father and his counsel were in close touch with and looking after his interests. No decision is cited by the appellant to support his contention that due process of law requires that at all stages of an administrative hearing the interested party must have the right to be represented by an attorney at law.

CONCLUSION

The applicant had a fair hearing on the question of fact; there was evidence to support the decision of the immigration authorities adverse to him, and the judgment below should be affirmed.

Respectfully submitted.

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